IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 144 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRIPRASAD BABUBHAI SHARMA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MTM HAKIM for Applicant(s) : 1,
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/11/2006

ORAL JUDGMENT

1. Present is the Revision Application filed by the petitioner- original accused against judgment and order passed by the learned Judicial Magistrate First Class, Padra in Criminal Case No. 679 of 1997 dated 19.08.2004, which was confirmed in part in Criminal

Appeal No. 44 of 2004 by the learned Additional Sessions Judge and 5th Fast Track Court, Vadodara by judgment and order dated 18.02.2005.

2. The facts of the case are that the present petitioner- original accused was tried by the learned Judicial Magistrate First Class, Padra in connection with an offence registered against him in Padra Police Station, being C.R. No. I- 44 of 1997 dated 6.2.1997 for the offence under Sections 279 and 337 of the Indian Penal Code and for the offence punishable under Sections 177 and 184 of the Motor Vehicles Act, 1988

The learned Judicial Magistrate First Class, Padra, by his judgment dated 19.08.2004, convicted the petitioner for an offence under Section 279 of the Indian Penal Code and Section 184 of the M.V. Act and awarded him one month's rigorous imprisonment, fine of Rs. 500/- and, in default, 15 days' rigorous imprisonment for both the offences. The learned J.M.F.C. was pleased to order that the sentences awarded to the accused shall run concurrently.

3. The learned Additional Sessions Judge and Fast Track Court No.5, Vadodara was pleased to partly allow the appeal filed by the accused. The learned Additional Sessions Judge was pleased to uphold the conviction and sentence for an offence under Section 279 of the Indian Penal Code. However, the learned Additional Sessions Judge quashed and set aside the

conviction under Section 184 of the M.V. Act and the sentence awarded for the same. The learned Additional Sessions Judge was pleased to order that fine amount of Rs. 500/- paid towards the offence under Section 184 of the M.V. Act be refunded to the accused on expiry of revision/appeal period.

4. Mr. M.A. Kharadi, learned advocate for Mr. Hakim appearing for the petitioner- original accused, submitted that he will not like to pitch his case too high and will rest contented, if the accused-petitioner is granted the benefit of Probation of Offenders Act and Section 360 of the Code of Criminal Procedure. In this regard, he relied upon a decision of this Court in the matter of Becharbhai Raijibhai Parmar Vs. State of Gujarat reported in 1991 (2) GLH 153, wherein taking into consideration various aspects of the case, the Court was pleased to grant the benefits flowing from Section 360 of the Code of Criminal Procedure and Sections 4 and 5 of the Probation of Offenders Act. Mr. Kharadi for Mr. Hakim submitted that, in that case, the petitioner was charged with an offence under Sections 279, 427, 304-A of the Indian Penal Code. He submitted that the Court, taking into consideration the factors which are set out in paragraph 9, was pleased to extend the benefit of Probation of Offenders Act and Section 360 of the Code of Criminal Procedure. The factors which were taken into consideration, set out in para 9, are as under:

> “1. That the accused has been serving as a driver of the S.T bus and he was in charge of the bus in discharge of his duty at the time of the unfortunate accident.
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> 2. That the accused is involved for the first time in such a road accident.
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> 3. That the accused is the only earning person in the family and he is required to maintain aged parents, younger brother, his wife and five children.
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> 4. Out of the five children, three children are studying in school.
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> 5. The offence in question occurred in 1981. Therefore, intervening time (lapse of nine years) is required to be borne in mind.
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> 6. The manner and mode in which the accident occurred.
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> 7. The effect of the order on the service career of the petitioner, who is a driver.
>
> 8. Award of compensation under Section 5(1)(a) of the Probation of Offenders Act.”

5. Mr. Kharadi next relied upon a decision of the Hon'ble the Apex Court in the matter of A.P. Raju Vs. State of Orissa reported in 1995 Supp (2) SCC 385. The learned advocate invited attention of the Court to head note A, which reads as under:

> “A. Rash and negligent driving- Motor vehicle dashing against a boy standing on kutcha portion of the right side of the road who later succumbed to the injuries caused by the accident- Held, the very fact that the accident

occurred on kutcha portion of the right side of the road is indicative of the negligent manner in which the vehicle was being driven- On facts, reversal of acquittal by the High Court justified- Motor Vehicles Act, 1988, Ss. 166 and 168."

Learned advocate Mr. Kharadi submitted that, despite the fact that the driver was charged with Section 304-A of the Indian Penal Code, the Hon'ble the Apex Court was pleased to extend the benefit flowing from Section 360 of the Code of Criminal Procedure. In this regard, he invited attention of the Court to head note C, which reads as under:

"C. Penal Code, 1860- S. 304-A- Sentence- Rash and negligent driving resulting in death of a boy- Occurrence taking place about 15 years ago- Appellant remaining on bail for the last more than 8 years- Held, in the circumstances, the appellant directed to be released under S.360 CrPC on probation of good conduct, be of good behaviour and keep peace for a period of one year- Criminal Trial- Sentence- Probation of Offenders Act, 1958, S.4."

6. Mr. Kharadi submitted that, though in the present case, the facts, which were present in the case before the Hon'ble the Apex Court, are not present, but still, the benefit flowing from Section 360 of Cr.P.C. can be extended for the reasons that

in the present case, it was only the driver- present accused- petitioner sustained injuries; while he was driving the tempo, dashed with a tree and sustained minor injuries on his own person. The learned advocate submitted that, even if it is assumed that the petitioner was driving the vehicle negligently, no damage or injury is caused to any member of public. He submitted that barring this solitary case there is no other incident on record to show that the petitioner is having past record of negligent driving, which will warrant denial of the benefits flowing from Section 360 of Cr.P.C. He further submitted that even after the alleged incident, which took place on 6.2.1997, such incident is not repeated. He submitted that an inference can be drawn that he has improved his driving as he is not held guilty for negligent driving and that is why no offence is registered against him.

7. Mr. H.L. Jani, learned Additional Public Prosecutor, submitted that cases of 'negligent driving' are increase and everyday, almost every page of the newspapers have at least one item of accident arising from negligent driving, causing damage to the property and injury to people. He submitted that the Court below have rightly convicted and sentenced the petitioner- accused and, therefore, the present Revision Application is not required to be entertained. The judgment and order of the learned Additional Sessions Judge, who has partly allowed the appeal of the petitioner, be confirmed.

8. Taking into consideration the rival submissions of the learned advocates and taking into consideration the facts of the case and taking into consideration two decisions cited by the learned advocate for the petitioner, this Court is of the opinion that, in the peculiar facts and circumstances of this case, viz. no member of the public has sustained any injury and it was the petitioner himself who had sustained injuries, the request of the learned advocate for the petitioner be granted. The benefits flowing from Section 360 of the Code of Criminal Procedure and Sections 4 and 5 of the Probation of Offenders Act be made available to him.

9. Accordingly, the petitioner-accused is directed to be released on probation of good conduct on his entering into a bond in the sum of Rs.5,000/- (Rupees Five Thousand Only) for a period of one year, to appear and receive sentence when called upon during the period of one year. The conviction recorded is maintained whereas sentence is quashed. The Revision Application is allowed. Rule is made absolute with no order as to costs.

Sd/-

(RAVI R. TRIPATHI, J.)

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